

ESTTA Tracking number: **ESTTA455588**Filing date: **02/09/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	BACCO 828 9TH AVE CORP.		
Entity	Corporation	Citizenship	New York
Address	828 Ninth Avenue New York, NY 10019 UNITED STATES		

Attorney information	Benjamin Natter Natter & Natter 501 Fifth Avenue Suite 808 New York, NY 10017 UNITED STATES b.natter@natter-natter.com Phone:212 840 8300
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**Registration Subject to Cancellation**

Registration No	4048084	Registration date	11/01/2011
Registrant	Malta, Robert Suite 503 444 Park Avenue South New York, NY 10016 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 043. First Use: 2007/05/23 First Use In Commerce: 2007/05/23  
All goods and services in the class are cancelled, namely: Bar and restaurant services

**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Registrant's claim of ownership of the B BOCCA DI BACCO (plus design) mark was false and fraudulent and made with the knowledge that BACCO 828 9TH AVE CORP. was the true owner and that Registrant had not used the mark.

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	85231454	Application Date	02/01/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	BOCCA DI BACCO
Design Mark	
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2007/11/12 First Use In Commerce: 2007/11/12 Restaurant and bar services

Attachments	85231454#TMSN.jpeg ( 1 page )( bytes ) Cancellation0209.pdf ( 4 pages )(19918 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	//Benjamin Natter//
Name	Benjamin Natter
Date	02/09/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BACCO 828 9TH AVENUE CORP.

Petitioner,

v.

ROBERT MALTA

Registrant.

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To: Commissioner for Trademarks  
P.O. Box 1451  
Alexandria VA 22313-1451

Attn: Trademark Trial and Appeal Board

**PETITION FOR CANCELLATION**

BACCO 828 9TH AVE CORP., a corporation organized under the laws of the State of New York, having an address of 828 9th Ave, New York, New York 10019, by and through its attorneys, Natter & Natter, believes that it is and will be damaged by the existence of Registration No. 4,048,084 for the mark B BOCCA DI BACCO (plus design) (registered in the name of Robert Malta (hereinafter referred to as “Registrant”) and hereby petitions to cancel said registration.

The grounds for cancellation are as follows:

1. On November 22, 2010, Registrant obtained registration on the Principal Register for the mark B BOCCA DI BACCO (plus design) in connection with restaurant and bar services in International Class 43.
2. Registration No. 4,048,084 is based upon Application Serial No. 85,182,222.
3. Petitioner, BACCO 828 9TH AVE CORP., has been using the BOCCA DI BACCO mark for restaurant and bar services since at least as early as November 12, 2007.
4. Petitioner, BACCO 828 9TH AVE CORP., is the owner of the restaurant located at 828 9th Avenue, New York, NY 10019 which operates under the service mark BOCCA DI BACCO. Through Petitioner, the restaurant has been in continuous operation at such location under the service mark BOCCA DI BACCO since November 2007 to the current date.
5. Petitioner entrusted Registrant, an officer of Petitioner's BACCO 828 9TH AVE CORP., with the responsibility of registering and maintaining its BOCCA DI BACCO mark on its behalf
6. Upon information and belief, Registrant, in intentional dereliction of his duty and responsibility and in breach of his fiduciary obligations to Petitioner intentionally, deliberately and without authorization of the Board of Directors of Petitioner, filed Application Serial No. 85/182,222 falsely claiming ownership of the B

BOCCA DI BACCO (plus design) mark in his own name, rather than in the name of, BACCO 828 9TH AVE CORP., the true owner.

7. Registrant's claim of ownership of the B BOCCA DI BACCO (plus design) mark was false and fraudulent and made with the knowledge that BACCO 828 9TH AVE CORP. was the true owner and that Registrant had not used the mark.

8. The specimen filed by Registrant in Application Serial No. 85/182,222 comprises a listing for the BOCCA DI BACCO restaurant owned and operated by BACCO 828 9TH AVE CORP. at 828 9<sup>th</sup> Avenue, New York, NY., showing the mark as used exclusively by BACCO 828 9TH AVE CORP. and was not a specimen showing use of the mark by Registrant.

9. Petitioner has priority with respect to the marks at issue in this proceeding. Petitioner adopted and commenced usage of the mark BOCCA DI BACCO, shown in Registration No. 4,048,084 as a service mark long before Registrant filed his application for registration, and long before usage of the mark by Registrant, if any.

10. On February 1, 2011, BACCO 828 9TH AVE CORP. filed Application Serial No. 85/231,454 for registration of the mark BOCCA DI BACCO in connection with bar and restaurant services.

11. Prosecution of application Serial No. 85/231,454 was suspended on April 30, 2011 pending a final disposition of the application which issued as Registration No. 4,048,084.

12. Continued registration of the mark B BOCCA DI BACCO (plus design) by Registrant, with the associated presumption of ownership and right to use, will result in a refusal to register Petitioner's mark in Application Serial No. 85/231,454, and will

likely preclude Petitioner from obtaining a registration for Petitioner's BOCCA DI BACCO mark.

13. Continued registration of the mark B BOCCA DI BACCO (plus design) by Registrant, will cause the purchasing public to assume erroneously, and to be confused, mislead and/or deceived into believing that Registrant is the owner of the B BOCCA DI BACCO (plus design) mark and the restaurant associated with such mark and will presumptively deprive BACCO 828 9TH AVE CORP. of the goodwill associated its BOCCA DI BACCO mark and cause irreparable harm, injury and damage to BACCO 828 9TH AVE CORP.

14. Continued registration of the mark shown in Registration No. 4,048,084 will result in damage to the Petitioner under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. §1052.

WHEREFORE, Petitioner requests judgment sustaining this Petition for Cancellation and that Registration No. 4,048,084 be cancelled.

Dated: New York, NY  
February 9, 2012

Respectfully submitted,  
NATTER & NATTER  
Attorneys for Petitioner  
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By /Benjamin Natter/  
Benjamin Natter